IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5697 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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GSRTC

Versus

NARANBHAI NATHABHAI SHIYAL

Appearance:

1. Special Civil Application No. 5697 of 2002

MS ROOPAL R PATEL for Petitioner No. 1

MR KISHOR M PAUL for Respondent No. 1

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 01/07/2002

ORAL JUDGEMENT

#. Rule. Mr.Paul waives service of rule for the respondent. In the facts and circumstances of the case, the matter is taken up for final hearing today.

#. The petitioner Corporation has challenged the award passed by the Presiding Officer, Labour Court, Junagadh in Reference (LCJ) No.207/98. The Labour Court partly allowed the reference of the respondent workman and passed the order of reinstatement with 40% back wages.

#. It is argued by the learned advocate for the petitioner that because of rash and negligent act of the driver, one child lost his life. It is argued that, since, simply because the driver was acquitted by the Criminal Court, is no ground to set aside the penalty imposed by the Corporation by which the driver was dismissed from service. It is required to be noted that, entire charge of negligence was proved against the respondent workman in the departmental inquiry. The Labour Court interfered with the punishment order and reinstated the respondent workman with 40% back wages.

#. In my view, in the facts and circumstances of the case, the Labour Court at the time of passing the order under section 11-A of the Industrial Disputes Act should have also considered the question of imposing of some penalty so that there may have some deterrent effect on the respondent workman. It is required to be noted that, because of his rash and negligent driving, one child lost his life and the aforesaid charge is also proved in the departmental inquiry.

#. Mr.Paul fairly submitted that, he is forgoing the claim of back wages. He further submitted that, he has no objection if the award of the Labour Court qua back wages is set aside. In my view, over and above the same, in the facts and circumstances of the case, the respondent workman should be subjected to the penalty of withholding of one increment with future effect.

#. In view of what is stated above, the award of the Labour Court is modified accordingly. The order of reinstatement is confirmed. However, the order so far as it relates to the payment of 40% back wages is concerned, the same is quashed and set aside. Over and above the same, the respondent workman will also be subjected to the penalty of withholding of one increment with future effect. The Corporation is directed to reinstate the respondent workman as per the award of the Labour Court as early as possible preferably within a period of six weeks from today, if he is not reinstated so far. The petition is accordingly partly allowed. Rule is made absolute to the aforesaid extent with no order as to costs.

(P.B.Majmudar,J)

(pathan)